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No. 93-780

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

ST. LOUIS SOUTH PARK, INC.,
d/b/a MERCY CONVALESCENT,
Petitioner,

vs.

MISSOURI DEPARTMENT OF SOCIAL SERVICES,
DIVISION OF MEDICAL SERVICES,
Respondents.

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE MISSOURI COURT OF APPEALS WESTERN DISTRICT

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St. Louis South Park, inc.-d/b/a/ Mercy Convalescent Center respectfully submits this reply brief in support of its petition for a writ of certiorari to the Missouri Court of Appeals for the Western District.

The central thesis of St. Louis South Park's petition is that the opinion below effectively repeals the equal protection clause in every social welfare program in Missouri. The brief filed by the Department of Social Services (the Department) confirms the validity of that thesis.

Point I of the Department's brief asserts that St. Louis South Park has "no underlying substantive right" afforded any protection by the equal protection clause. Br. at 9. The rationale for this conclusion is that St. Louis South Park "would not have a property interest" in receiving Medicaid reimbursement, and therefore can have no interest "subject to the protection of the Fourteenth Amendment." Br. at 11.

Of course, no service provider to or beneficiary of a social welfare program has such a property interest. *Weinberger v. Salfi*, 422 U.S. 749, 772 (1975). Thus, the Department is arguing that the equal protection clause does not apply to any of its programs. That argument is identical in principle to the Missouri Supreme Court's holding in *Millsap v. Quinn*, 757 S.W.2d 591 (Mo. banc 1988), which this Court unanimously reversed. 491 U.S. 95 (1989).

The procedural due process cases on which the Department relies are irrelevant to this equal protection claim. This Court has explicitly held that it has "no intention to suspend the operation of the Equal Protection Clause in the field of social welfare law." *Hagans v. Levine*, 415 U.S. 528, 539 (1974). The Department's arrogant assertion to the contrary underscores the urgency of this Court's review.

By failing to apply any meaningful scrutiny to the Department's policies, the opinion below gives the Department carte blanche to ignore the equal protection clause. The Department's other excuses for this manifestly incorrect ruling do not pass muster. The Department claims that the court below "followed" this Court's precedents — because the opinion cites some of them. Br. at 12-15. Citing a case, while ignoring its principle, is just the sort of judicial rubber stamp that the Department wants. Each of this Court's precedents supplies what the opinion below does not

— a rational explanation of why the unequal classification serves some public purpose.

The Department also says that cost control is a legitimate objective, and that it was one of many reasons for the New Plan's discriminatory treatment. Br. at 16-17. Evidently, the Department has completely missed the point. *Plyler v. Doe*, 457 U.S. 202 (1982), does not hold that controlling costs is not a legitimate public concern. It holds that there must be a rational explanation of why that concern justifies the unequal classification in question. Neither the opinion below nor the Department has ever explained why discrimination based solely on fiscal year ends is rationally related to that purpose.

Significantly, the Department admits that administrative convenience justifies that discrimination *only* if it "rises to a certain level." Br. at 20. The Department does not dispute that the administrative burden required to correct the discrimination is minimal. Instead, it argues that the opinion below rested on "simplify[ing] accounting procedures" rather than on administrative convenience. Br. at 19-20. It is precisely because the opinion below uncritically accepts such mindless distinctions that it is nothing more than a rubber stamp.

As a result, the opinion below repeals the equal protection clause in social welfare programs. The Department's brief is clear evidence that the Department intends to take full advantage of that opinion. Like the rest of the nation, Missouri is confronting a new era in the provision of medical services. In this new era, all Americans — not just the poorest among us — require protection from arbitrary government action. Unless this Court grants review, Missouri citizens will not have that protection.

Respectfully Submitted,

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